IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 3242 of 1998

Maruti Madhavrao Jagtap & ors. .. Petitioners

versus

State of Maharashtra & ors. .. Respondents

...

Mr.S.L. Kapse for the petitioner.

Mr.V.S. Gokhale, AGP for respondent nos.1 to 5.

Mr.Rajesh P. Behre for respondent no.6.

CORAM : S.B. MHASE, AND

D.G. KARNIK, JJ

DATED : 21st February 2006.

P.C.:

1. Heard learned counsel appearing for the parties.

2. By this petition, the petitioner challenges

the notification dated 14th October 1994 issued under section 11 of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 (for short "the Rehabilitation Act, 1986")

3. The petitioner nos.1, 2, 3, 7 and 8 are residents of Village Mandki, Taluka Purandhar, District Pune. The petitioner nos.4, 5 and 6 are the companies operating lift irrigation schemes in the Village Mandki. The Village Mandki is situated on the bank of river Neera. The total area of lands of all kinds of Village Mandaki is about 1835 Hectars equivalent to 4588 acres owned by 1241 land holders or Khatedars. According to the petitioners, about 1482 hectars of land is cultivable land and the remaining is grazing land. A dam known as "Veer" dam was constructed sometime in the year 1960. Out of the 1482 hectars land admeasuring 927 hectares came under irrigation either by flow irrigation or through the lift irrigation schemes run by petitioner nos.4, 5, and 6 after the Veer dam project. It is not disputed that the remaining land of over 300 hectares is not irrigated under the Veer dam project.

4. In order to irrigate the remaining land in the

village Mandki as also to irrigate lands in several other villages, the State Government proposed another project known as "Gunjavni Irrigation Project" on another river viz. Kanandi passing through Velhe taluka in District Pune. About 26,290 hectares of land would receive benefit of irrigation and an area of 1014 hectares of land would be sub-merged/affected because of Gunjavni Project. In order to resettle the persons whose lands would be sub-merged and/or affected by Gunjavni Project the State Government issued a notification dated 14th October 1994 under section 11 of the Rehabilitation Act, 1986. That notification is impugned in this petition.

5. We are of the view that petition is misconceived and is liable to be dismissed for the reasons that follow.

6. The petitioner has prayed that the decision of the Government to apply the provisions of Rehabilitation Act, 1986 to Village Mandki and consequent notification dated 14th October 1994 should be quashed. The petition appears to be under a misapprehension that the provisions of the Rehabilitation Act, 1986 are required to be made

applicable by a notification. This was perhaps because prior to the Rehabilitation Act 1986, there was another Act called as "Maharashtra Resettlement of Project Displaced Persons, Act 1976 (for short "Resettlement Act of 1976") which required issuance of a notification for its application. Resettlement Act of 1976 was not applicable to every irrigation project. It was optional for the Government to make the provisions of Resettlement Act of 1976 applicable to any project. Resettlement Act of 1976 applied only to those projects to which the State Government made it applicable by issuance of a notification in the public interest under section 11 of the Resettlement Act of 1976. In other words, it was open to the Government to decide whether the Resettlement Act of 1976 should be made applicable to a project in the public interest. Where a large number of persons were likely to be affected, in the public interest the Government could make the Rehabilitation Act of 1976 applicable. However, where large number of persons were not likely to be affected on account of any irrigation project, the Government would not issue a notification making the Resettlement Act of 1976 applicable. The Resettlement Act of 1976 gave power of the Government to decide to which the projects the Act should be made applicable. However,

the position changed by the repeal to Resettlement Act of 1976 by the Resettlement Act, 1986. Section 1(4) of the Resettlement Act, 1986 provides that the Act shall apply to all irrigation projects in which the area of the affected zone exceeds 200 hectares or a Gaothan is affected or the are of benefitted zone exceeds hectars. Thus, the descretion which was conferred on the Government to decide the projects to which the Resettlement Act should be made applicable was taken away and an objective standard was provided that the Resettlement Act, 1986 would apply where the area of an affected zone exceeded 200 hectares or a Gaothan wss affected. It is not disputed that the area of the affected zone in respect of the Gunjavni is more than than 200 hectares. The provisions of the Resettlement Act, 1986 have therefore become statutory and applicable by reason of section 1(4) thereof. Therefore, the belief of the petitioner that the Act was amde applicable by the impugned notification, is erroneous. The Act became applicable by reason of the statutory provision and not by reason of the notification.

7. The Resettlement Act, 1986 requires the State Government to rehabilitate the people who are likely to

be affected on account of an irrigation project. The Resettlement Act, 1986 requires lands belonging to persons holding land in excess of certain limit in the benefited zone to be acquired in a progressive proportion of holding for rehabilitation of the people who are affected on account of submergence of their agricultural lands or gaothan lands on account of the irrigation project. Section 11 requires the State Government to specify in Official Gazette the areas which are likely to be benefitted and areas which are likely to be affected on account of an irrigation project. The impugned notification is issued in pursuance of an obligation of the State Government to do so under section 11. The State Government has thus performed its statutory duty and we do find any fault in the notification.

8. It was faintly suggested that most of the lands in Village Mandki were already irrigated on account of the Veer dam project and therefore there was no necessity of initiating yet another project like the Gunjavni project. Perusal of the impugned notification would show that the project is meant not only for benefiting the Village Mandki but about 49 villages would be covered in the benefitted zone of the Gunjavni

project. Total area of 26290 hectares is likely to be irrigated by the poject. Ordinarily, whether an irrigation project should be undertaken and where it should be taken is a matter of policy. In the absence of malafides examinatin of correctness of the matter of policy is out of bonds for the Courts. Judicial scrutiny would be limited to examine whether the policy decision is malafide. In the whole of the petition, there are no allegations of malafides. The only allegations are that Village Mandki does not need any additional irrigation facility. The Courts are ill equipped to examine whether a particular area needs an irrigation facility or not and the decision is better left to the executive who is in possession of the relevant data to determine what irrigation projects should be undertaken by the State Government. In the absence of malafides, the policy decision in that regard cannot be a subject matter of judicial scrutiny.

9. For these reasons, we are satisfied that there is no merit in the petition which is hereby dismissed with costs.

10. The request made by learned counsel for the petitioner for continuation of interim relief is

rejected.

(D.G. KARNIK, J) **(S.B. MHASE, J)**